



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Technology and Management Service, Inc.--  
Request for Reconsideration  
File: B-231025.6  
Date: September 13, 1988

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### DIGEST

Request for reconsideration of prior decision dismissing protest of contracting officer's failure to notify protester of identity of proposed awardee under a small business set-aside as required by regulation is denied since the Small Business Administration Regional Office subsequently determined that the awardee is a small business concern for this procurement and therefore the protester was not prejudiced by the procedural deficiency.

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### DECISION

Technology and Management Service, Inc. (TMS) requests reconsideration of our decision, Technology and Management Service, Inc., B-231025.5, Aug. 11, 1988, 88-2 CPD ¶ \_\_\_\_\_, in which we declined to reinstate TMS' protest against award to Diversified Systems Resources, Ltd. (DSR), under request for proposals (RFP) No. DE-RF19-BC14129, issued by the Department of Energy (DOE) for the acquisition of administrative and management support services. We deny the request.

In its original protest filed with this Office, TMS listed a number of procurement irregularities which, in effect, challenged (1) the agency's failure to conduct meaningful discussions with TMS, and (2) the agency's failure to provide the protester the opportunity before award to protest the size status of DSR to the Small Business Administration (SBA).

After the protest was filed, but before submission of the protest report, the agency determined that the contract with DSR should be terminated and the performance work statement rewritten. We issued no decision on the merits of TMS' protest, dismissing it as academic, since the agency had already granted the requested relief.

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Subsequently, on May 23, 1988, DSR protested the termination of its contract to the General Services Administration Board of Contract Appeals (GSBCA). By decision dated July 27, 1988, the GSBCA found that DOE had improperly terminated the contract and directed DOE to reinstate the award to DSR. TMS then requested reinstatement of its protest, contending that the GSBCA decision went to the single issue of whether the DOE termination for convenience was proper, and that the decision was not dispositive of the fundamental issues raised in TMS' original protest to this Office.

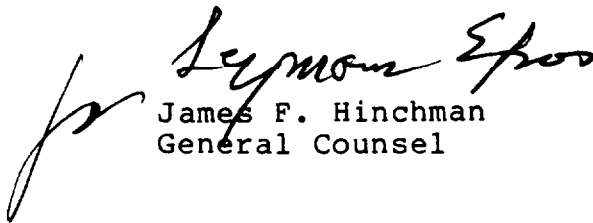
In our prior decision declining to reinstate the protest, we found that the GSBCA decision effectively resolved the central issue raised by TMS, i.e., the agency's failure to conduct meaningful discussions. We therefore found this issue inappropriate for our consideration based on our previous decisions holding that once the GSBCA has exercised jurisdiction over a procurement, any protest to this Office involving the same procurement issue will be dismissed without consideration of the merits in deference to the binding effect of a GSBCA protest decision on the agency involved, subject to appeal to the United States Court of Appeals for the Federal Circuit. See Resource Consultants, Inc., 65 Comp. Gen. 72 (1985), 85-2 CPD ¶ 580. We also determined TMS' other basis of protest, concerning its denial of an opportunity to protest to the SBA the size status of DSR, to be academic, since TMS had in fact filed a size status protest with the SBA.

In its request for reconsideration, TMS contends that our Office incorrectly concluded that this second issue was academic. It is TMS' position that while it has filed a post-award size status protest, because the agency violated Federal Acquisition Regulation (FAR) § 15.1001(b) (2) (FAC 84-13) by not providing it the required preaward notice, TMS has been denied the right to submit a timely preaward size protest so that the SBA decision, when rendered, would apply to this procurement. TMS asserts that we should consider its protest on this issue.

Reinstatement of the protest would serve no useful purpose. After receipt of TMS' reconsideration request, we received a copy of the SBA Regional Office decision dated June 23, 1988, in which the SBA found DSR to be a small business for the purpose of this procurement. There is no requirement that the agency withhold award after the initial SBA Regional Office determination, see Suddath Moving Systems, Inc., B-229992, Apr. 1, 1988, 88-1 CPD ¶ 332, so that the agency in any event would have been free to award to DSR on or after June 23. While TMS has appealed this determination to the SBA's Office of Hearings and Appeals pursuant to

13 C.F.R. § 121.11 (1988), the SBA's decision on appeal will not apply to this procurement. FAR § 19.302(i) (FAC 84-12). Thus, TMS was not prejudiced by the agency's not providing TMS a timely opportunity to challenge DSR's size status preaward.<sup>1/</sup> We will not sustain protests involving alleged procedural deficiencies in connection with size status protests, such as a failure to give notification of the intended awardee, where SBA determines that the certifying firm is small for purposes of a particular procurement. See Service Engineering Co., B-225623, Apr. 28, 1987, 87-1 CPD ¶ 442. That is what happened here. Accordingly, we see no reason to permit reinstatement of the protest.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel

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<sup>1/</sup> While we have not been provided a copy, the record also indicates that the contracting officer on April 7, 1986, apparently made a written determination that the "urgency" of contract award precluded giving preaward notice pursuant to FAR § 15.1001(b)(2) (FAC 84-13).